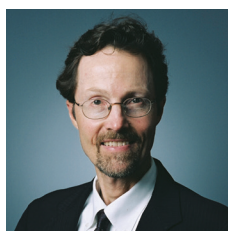


JAY ENNIS, RICP®

# INDEPENDENT INSIGHT



## HOW THE SECURE ACT 2.0 IS VERY BENEFICIAL FOR RETIREMENT SAVERS



GARY MAACK-  
MAGNUSSON

JD, LL.M., CFP®, ChFC®, CLU

Advanced Sales Attorney

Advanced Markets &  
Qualified Plans

Advisor Group

On December 29, 2022, President Biden signed the Consolidated Appropriations Act of 2023. That spending package included the 358-page Setting Every Community Up for Retirement Enhancement Act, also known as SECURE Act 2.0, which builds on the first SECURE Act, passed at the end of 2019.

The effective dates for the provisions vary widely. Some are effective as of the **date of enactment: December 29, 2022**. Others are effective January 1, 2023. Still others are effective in later years. This article will indicate the effective dates next to each provision.

### SUMMARY OF KEY PROVISIONS

#### Individuals

- The beginning date for **required minimum distributions** was raised from 72 to 73, starting in 2023, and to 75 in 2033.
- **The 50% penalty for failure to take an RMD was reduced to 25%** and, if the failure is corrected within a 2-year correction window, the **penalty is further reduced to 10%**. Effective after date of enactment.

- IRAs and employer plans with annuity contracts may now annuitize the contracts and use the annuity payments to satisfy the RMDs that are due on other assets in the account. All assets in the account may be aggregated, and the annuitized payments, if large enough, can fulfill the RMD requirement for the total account. Effective on date of enactment.

- **Annuities in qualified accounts may offer increasing lifetime payments:** The Act amends the required minimum distribution rules to allow lifetime income annuities in IRAs and retirement plans to offer annual payment increases of up to 5%. The new rule applies to IRAs, 403(b)s, 457(b)s, and qualified retirement plans (other than defined benefit plans). Effective in 2023.
  - **Annuities in qualified accounts may offer return of premium death benefits:** The Act similarly amends the RMD rules to permit lifetime annuities with return of premium death benefits to be used in the above qualified accounts. Effective in 2023.
  - Families with **leftover 529 money** will be able to move it into a Roth IRAs. (Restrictions apply. See page 4.) Effective in 2024.
  - The existing **tax credit for low-income savers was changed** from a nonrefundable tax credit, receivable as a tax refund, to a refundable, federal matching contribution that **must be deposited in the taxpayer's IRA or retirement plan**. Effective in 2027.
  - **Substantially equal periodic payments:** The new law clarifies that the exception to the 10% early distribution penalty for substantially equal periodic payments continues to apply **if the entire account is rolled over or if the annuity providing the payments is exchanged**. Effective for rollovers, transfers, or exchanges in 2024 and after.
  - **No 10% penalty on corrective distributions of excess contributions and their earnings:** The Act eliminates the 10% penalty on corrective distributions and their earnings when too much has been contributed to IRAs. (The excess could arise from ineligibility to make the contributions.) Effective on enactment.
  - **Qualified longevity annuity contracts:** SECURE Act 2.0 eliminates the 25% limit and increases the dollar limit to \$200,000. Indexed for inflation. Free-look periods of up to 90 days are permitted. Effective for contracts purchased or received in an exchange on or after the date of enactment.
  - **Qualified charitable distribution:** The Act allows individuals to make a one-time qualified charitable distribution of up to \$50,000 from an IRA to a charitable remainder annuity trust, charitable remainder unitrust, or charitable gift annuity. Indexed for inflation. Effective after date of enactment.
  - **Observation:** An IRA owner must be 70½ to take a QCD.
  - The **eligibility age for ABLE accounts** was increased from 26 to 46. Effective in 2026.
  - **A surviving spouse who inherits a retirement plan account** may elect to be treated as an employee and may use the uniform lifetime table to calculate required minimum distributions. Effective in 2024.
- ### PLAN SPONSORS
- SECURE Act 2.0 requires **new 401(k) and 403(b) plans to automatically enroll participants** upon becoming eligible. (There are exceptions. See below.) Effective in 2025.
  - Catch-up contributions for **employees making more than \$145,000 per year may only be made as after-tax, Roth contributions**. Employees making \$145,000 or less may continue to make catch-up deferrals either as pre-tax or Roth. Effective in 2024.
  - Employers may allow employees to choose **whether to have employer matching or nonelective contributions be pre-tax or Roth**. Effective for contributions made after enactment.
  - Credit for the retirement plan **start-up costs of small employers was increased from 50% to 100%**, with an annual cap of \$5,000. The credit may be taken for 3 years. Effective in 2023.
  - **Roth 401(k) accounts** would no longer be required to take required minimum distributions. They would be treated the same as Roth IRAs, where RMDs are not required for account owners. Effective in 2024.
  - Employers could choose to **match student loan payments** of their employees with matching contributions to SIMPLEs, 401(k)s, 403(b)s, or governmental 457 (b) plans. Student loan payments would be treated as elective deferrals. An employer may rely on an employee's certification of payment. Effective in 2024.
  - **Eligibility for part-time employees:** The period-of-service requirement for part-time employees is reduced from 3 consecutive years of **working at least 500 hours to 2 years**. (Work performed before 2023 is disregarded for both eligibility and vesting purposes under the new part-time provision.) Effective in 2025.

- **For non-SIMPLE plan participants ages 60-63**, the catch-up limits were increased to the greater of \$10,000 or 150% of the regular catchup amount. Indexed for inflation. Effective in 2025.
- **For SIMPLE plan participants ages 60-63**, the catch-up limits were increased to the greater of \$5,000 or 150% of the regular catch-up limit. Indexed for inflation. Effective in 2025.
- SIMPLE IRAs can accept **employee deferrals as Roth contributions**. Effective in 2023.
- An employer can make **discretionary contributions to SIMPLE IRAs**, so long as they are made in a uniform manner and the contribution does not exceed the lesser of 10% of compensation or \$5,000 (indexed for inflation). Effective in 2024.
- Employers will be allowed to **replace SIMPLE IRAs with safe harbor 401(k)s during the plan year**. The 2-year rollover limitation is waived. Effective for plan years beginning in 2024.
- At the employer's choice, **a SEP can offer employees the option to treat employee and employer SEP contributions as Roth contributions**. Effective in 2023. (Employee contributions can only be made in grandfathered SARSEPs.)
- The new law allows **withdrawals for certain emergency expenses of up to \$1,000, without penalty, from 401(k), 403(b), and 457(b) plans and IRAs**. Expenses must be unforeseeable and for immediate financial needs. The withdrawal may be repaid within 3 years. No further such distribution is permitted within the 3-year period unless repayment has occurred. Effective in 2024.
- SECURE Act 2.0 creates an exception to the 10% penalty for distributions from qualified retirement plans to **individuals with terminal illnesses**. The definition for terminal illness is expansive: Death is expected within 84 months (7 years). Effective upon enactment.
- The new legislation also creates an exception to the 10% penalty for distributions from defined contribution plans **used to pay premiums on specified long-term care contracts**. Distributions up to \$2,500 used to pay premiums are penalty free. Income tax must still be paid. Effective 3 years after date of enactment, i.e., December 29, 2025.
- The Act also allows **in-service, penalty-free withdrawals from 401(k), 403(b), and 457(b) plans for domestic abuse survivors**. The amount may not exceed the lesser of \$10,000 or 50% of an employee's vested account. Effective in 2024.
- **NEW:** Plan sponsors may offer "**emergency savings accounts**" as part of defined contribution plans. ESA contributions are "Roth-like," i.e., after-tax, and capped at \$2,500. (See below for details.) Effective in 2024.
- Another exception to the 10% penalty was created for withdrawals up to \$22,000 from employer plans or IRAs for expenses incurred in **qualified federally declared natural disasters**. The distributions are taken into income over a 3-year period. The account owner has 3-years to roll the money back into a qualified account. Effective for disasters occurring on or after January 26, 2021.
- **Certain, unrelated 403(b) sponsors** will be permitted to participate in **multiple employer 403(b) plans**. Effective in 2023.
- Employers without a retirement plan will be able to create a "**starter 401(k) plan or safe harbor 403(b) plan**, consisting of employee deferrals only, made by automatic enrollment. Contribution limits are the same as IRAs. Effective in 2024.
- The Act allows **sole proprietors to make 401(k) elective deferrals for the first plan year up to the tax filing due date**, not including extensions. With this new provision, a 401(k) plan for a sole proprietor may be both set up and completely funded up to the tax filing date. Contributions made after December 31 can be deducted in the prior year. Effective upon enactment.
- **Involuntary cashout from retirement plans increased from \$5,000 to \$7,000:** Employers may directly roll over a former participant's retirement account to an IRA—without the employee's consent—if the account balance is under \$7,000. Effective in 2024.
- **Plan fiduciaries no longer required to recoup retirement plan overpayments:** Plan fiduciaries are no longer required to recover overpayments made to retirees.
- However, fiduciaries may continue to do so, at their discretion. **Collection efforts are restricted:** No interest may be charged, and recovery must occur within 3 years. Effective upon enactment.

- **Missing participants and plans:** The Department of Labor is instructed to **develop an online, searchable database** of retirement plans so employees, beneficiaries, and employers can find missing retirement accounts and match them to their corresponding plan sponsor or participant. The DOL has 2 years from date of enactment to develop the database.

## DISCUSSION OF SELECTED PROVISIONS

### Individuals

- **Rollovers from long-term 529 accounts to Roth IRAs:** **Starting in 2024**, leftover 529 savings can be rolled, in a trustee-to-trustee transfer, to a Roth IRA for the 529 designated beneficiary. The rollovers are free of income tax and penalty. Several conditions apply.
  - The 529 account must have been open for 15 years or more.
  - There is a \$35,000 lifetime limit per account beneficiary.
  - The amount of each rollover is limited to the amount that can be contributed annually to a Roth. In 2023, Roth IRA contributions are limited to \$6,500 for those under age 50, with an additional \$1,000 contribution permitted for those 50 or over.
  - The Roth IRA owner must have compensation at least equal to the amount of the rollover.
  - There is no income limit for who can roll excess 529 funds into Roth IRAs.
- Presumably, parents who are owners of 529 accounts for their children will be able to change the beneficiaries on 529 accounts to themselves—as they can now—and roll the excess to their own Roth IRAs.
- **Qualified charitable distributions may be made to split-interest entities:** The new law gives an individual a one-time election to transfer up to \$50,000 from an IRA, tax-free, to a charitable gift annuity, charitable remainder annuity trust, or charitable remainder unitrust.
  - **Observation:** The cost to set up and administer a charitable remainder trust is considerable and is probably not worth it for just \$50,000. Distributions from CRTs funded with QCDs are taxable as ordinary income.

- **Charitable gift annuities**—the most viable of the split interest entities—refers to annuities paid by the charitable organizations themselves, not commercial annuity contracts. The charitable gift annuities may, however, be backed up by commercial annuities.
- The new QCD provision is effective for tax years beginning after enactment.

### PLAN SPONSORS

- **New automatic enrollment:** For plan years starting in 2025, SECURE Act 2.0 requires new 401(k) and 403(b) plans to automatically enroll employees in the plans. Employees may opt out if they choose.
 

The automatic enrollment must have a default deferral rate of at least 3% but not more than 10%. The default rate must automatically increase by 1% per year, up to a maximum of at least 10%, but no more than 15%.

Exemption from automatic enrollment: Governmental and church plans, small employers with 10 or fewer employees, SIMPLE plans, and new employers that have been in existence less than 3 years are exempt. Existing plans established before the date of enactment are also exempt.
- **Emergency savings accounts:** Starting in 2024, employers may automatically enroll their non-highly compensated employees in emergency savings accounts that are linked to defined contribution plans. Employees may opt out of the accounts.
  - The automatic deferral is capped at 3% of compensation and goes in as an after-tax, Roth-like contribution. Employee contributions must be no more than \$2,500 per year.
  - Participants must meet the age and service requirements of the plan.
  - The plan document must be amended to include an ESA feature.
  - Participants must be allowed to take one withdrawal per month.
  - The first 4 withdrawals per year cannot be subject to any fees.
  - At separation from service, employees may take their ESAs in cash or roll them into Roth IRAs or Roth accounts in employer plans.

## REGULATIONS AND OTHER GUIDANCE

The IRS will be issuing regulations and other guidance on SECURE Act 2.0. Investment advisors, employers, and individual taxpayers should be on the lookout for future refinements to the law.

## CONCLUSION

The SECURE Act 2.0 of 2022 made major changes to the retirement rules for individuals and employer plans.

- All employers should review their retirement plan strategies in light of the new law. Plan amendments will be required.

Individuals and employers should consult with their financial and tax advisors for the best ways to take advantage of the new law.



**JAY ENNIS, RICP®**

431 28th St., Ste 102  
Des Moines, IA 50312  
515.279.5867  
jennis@focusfinancial.com  
[www.jayennis.com](http://www.jayennis.com)

Securities offered through Royal Alliance Associates, Inc. (RAA), member FINRA/SIPC. Insurance and investment advisory services offered through Focus Financial. RAA is separately owned and other entities and/or marketing names, products or services referenced here are independent of RAA.

Original Issue Date: January 2023

Advisor Group has prepared this material based on our understanding of the laws and regulations at the time of issue. Advisor Group shall not be liable for any loss Advisor Group has prepared this material based on our understanding of the laws and regulations in effect at the time of publication. Advisor Group shall not be liable for any loss or damage caused or alleged to have been caused by the use of or reliance upon the information provided, since laws and regulations change frequently and are subject to differing legal interpretations.

While the concepts, issues, and examples covered in this material have been checked with sources believed to be reliable, some material may be affected by change in the laws or in the interpretations of such laws since this material was prepared.

While the tax or legal guidance provided here is based on our understanding of current laws, the information is not intended as tax or legal advice and should not be relied upon as such. The broker-dealer generating this article does not provide tax or legal advice. As with all matters of a tax or legal nature, clients should consult with their own tax or legal counsel for advice.

U.S. Treasury Circular 230 requires Advisor Group to advise you that "any tax information provided in this document is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer. The tax information was written to support the promotion or marketing of the transaction(s) or matter(s) addressed. You should seek advice based on your particular circumstances from an independent tax advisor."

The information provided is not intended as tax or legal advice and should not be relied upon as such. The broker-dealer generating this article does not provide tax or legal advice. As with all matters of a tax or legal nature, clients should consult with their own tax or legal counsel for advice.

Securities and investment advisory services are offered through the firms: FSC Securities Corporation, Royal Alliance Associates, Inc., SagePoint Financial, Inc., Triad Advisors, LLC, Infinex Investments, Inc., and Woodbury Financial Services, Inc., broker-dealers, registered investment advisers, and members of FINRA and SIPC. Securities are offered through Securities America, Inc., American Portfolios Financial Services, Inc., and Ladenburg Thalmann & Co., broker-dealers and member of FINRA and SIPC. Advisory services are offered through Arbor Point Advisors, LLC, American Portfolios Advisors, Inc., Ladenburg Thalmann Asset Management, Inc., Securities America Advisors, Inc., and Triad Hybrid Solutions, LLC, registered investment advisers. Advisory programs offered by FSC Securities Corporation, Royal Alliance Associates, Inc., SagePoint Financial, Inc., Securities America Advisors, Inc., Triad Advisors, LLC, and Woodbury Financial Services, Inc., are sponsored by VISION2020 Wealth Management Corp., an affiliated registered investment adviser.

Advisor Group is a member of FINRA and SIPC and is a Registered Investment Advisor.